

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

v.

D. ARDEN, et al.,

Defendants.

Case No. 1:21-cv-00818-ADA-CDB (PC)

**ORDER GRANTING DEFENDANTS'  
MOTION TO STAY CASE AND TO  
MODIFY DISCOVERY AND  
SCHEDULING ORDER**

(Doc. 32)

Plaintiff Devonte B. Harris is a state prisoner proceeding pro se in this civil rights action. This matter proceeds on Plaintiff's Eighth Amendment excessive force claims against Defendants Arden, Gamboa, Garcia, Pasillas and Perez, and First Amendment retaliation claims against Defendants Arden, Gamboa, Garcia and Pasillas.

**I. INTRODUCTION**

On August 21, 2023, the Court issued its Discovery and Scheduling Order in this matter. (Doc. 28.) On January 8, 2024, Defendants filed a motion to stay these proceedings. (Doc. 32.) The motion is supported by the Declaration of Andrea R. Sloan (*id.* at 8-9) and two exhibits filed in a Kings County Superior Court criminal proceeding (*id.* at 10-17 [Exhibit A: Complaint filed 8/11/2020 & Exhibit B: Information filed 7/14/2022]). The Court finds a response by Plaintiff to be unnecessary.

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## II. DISCUSSION

Defendants seek a stay of this action pending resolution of criminal proceedings against Plaintiff now pending in the Kings County Superior Court, case number 20cm-4017. (Doc. 32 at 1, 3.)

In this civil action, Plaintiff has alleged excessive force claims against Defendants Arden, Gamboa, Garcia, Pasillas and Perez, stemming from an incident that occurred on June 14, 2019. (See Docs. 14 & 15.) As a result of the same incident, Plaintiff is facing felony criminal charges of battery on a peace officer (Defendant Arden) and three counts of resisting an officer by means of force or threat (Defendants Arden, Garcia and Gamboa). (Doc. 32 at 4-5, 8, 15-16.) Defendants advise Plaintiff's motion for mental health diversion and mental health evaluation will be heard on January 24, 2024, in the state court action. (*Id.* at 5.) Defendants contend an extended stay of this action is appropriate pending resolution of the state court criminal matter. (*Id.*) Additionally, Defendants assert they are unable to properly assess their defenses, including the potential applicability of a *Heck*<sup>1</sup> bar, until the criminal proceeding is resolved. (*Id.*) Defendants additionally seek a stay of the previously issued Discovery and Scheduling Order. (*Id.*)

### The Motion To Stay the Case

#### *Applicable Legal Standards*

The district court “has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). A stay is discretionary and the “party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). “Generally, stays should not be indefinite in nature.” *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066–67 (9th Cir. 2007). If a stay is especially long or its term is indefinite, a greater showing is required to justify it. *Yong v. I.N.S.*, 208 F.3d 1116, 1119 (9th Cir. 2000). The Court should “balance the length of any stay against the strength of the justification given for it.” *Id.*

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<sup>1</sup> *Heck v. Humphrey*, 512 U.S. 477 (1994).

1 “The Constitution does not ordinarily require a stay of civil proceedings pending the  
2 outcome of criminal proceedings.” *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th  
3 Cir. 1995). “In the absence of substantial prejudice to the rights of the parties involved,  
4 [simultaneous] parallel [civil and criminal] proceedings are unobjectionable under our  
5 jurisprudence.” *Id.* “Nevertheless, a court may decide in its discretion to stay civil proceedings ...  
6 ‘when the interests of justice seem[] to require such action.’” *Id.* (citations omitted).

### 7 *Analysis*

8 When a civil plaintiff brings claims under section 1983 that are “related to rulings that  
9 will likely be made in a pending or anticipated criminal trial,” it is “common practice” for the  
10 court “to stay the civil action until the criminal case or the likelihood of a criminal case is  
11 ended.” *Wallace v. Kato*, 549 U.S. 384, 393–94 (2007); *see Fed. Saving & Loan Ins. Corp. v.*  
12 *Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989) (“A court must decide whether to stay civil  
13 proceedings in the face of parallel criminal proceedings in light of the particular circumstances  
14 and competing interests involved in the case.”).

15 When determining whether a stay is appropriate, courts look to whether the criminal  
16 defendant’s Fifth Amendment rights may be implicated by the civil proceedings. *Keating*, 45  
17 F.3d at 324 (citing *Molinaro*, 889 F.2d at 902). Courts also consider (1) the interest of the  
18 plaintiff in proceeding with the litigation and the potential prejudice to the plaintiff of a delay;  
19 (2) the convenience of the court and the efficient use of judicial resources; (3) the interests of  
20 third parties; and (4) the interests of the public. *Keating*, 45 F.3d at 324-25.

21 Here, the civil rights action implicates Plaintiff’s Fifth Amendment rights. The facts and  
22 circumstances underlying Plaintiff’s criminal prosecution for felony battery by a prisoner on a  
23 non-prisoner involving Defendant Arden, and three felony counts of resisting an officer by  
24 means of force or threat as to Defendants Arden, Garcia and Gamboa, substantially overlap with  
25 the excessive force claims at issue in this case. Both cases involve the June 14, 2019 incident  
26 between Plaintiff and the Defendants and will likely involve substantially the same parties and  
27 witnesses. Thus, if this case proceeds, Defendants will seek discovery from Plaintiff, and he will  
28 be required to respond under oath. The discovery will involve Plaintiff’s alleged misconduct on

1 June 14, 2019. Thus, there exists a substantial risk of prejudice to Plaintiff's Fifth Amendment  
2 rights. Furthermore, if Plaintiff invokes his Fifth Amendment rights it may impede Defendants'  
3 discovery. *Jones v. Conte*, No. C045312S1, 2005 WL 1287017, at \*1 (N.D. Apr. 19, 2005)  
4 (finding that a stay of the civil case involving defendant in criminal action was appropriate  
5 "because [i]f discovery moves forward, [the] defendant will be faced with the difficult choice  
6 between asserting [his] right against self-incrimination, thereby inviting prejudice in the civil  
7 case, or waiving those rights, thereby courting liability in the civil case") (internal quotations &  
8 citation omitted).

9 Likewise, the other *Keating* factors also support a stay. Any prejudice to Plaintiff is  
10 minimal given that both proceedings involve the similar facts and witnesses, and it is unlikely  
11 that evidence will be lost, or memories will fade with passage of time. *McCormick v. Rexroth*,  
12 No. C 09-4188 JT, 2010 WL 934242, at \*3 (N.D. Cal. Mar. 15, 2010). In addition, the public  
13 interest weighs in favor of a stay because "[t]he public has an interest in 'ensuring that the  
14 criminal process is not subverted' by ongoing civil cases." *Douglas v. United States*, No. C 03-  
15 4518, 2006 WL 2038375, at \*6 (N.D. Cal. July 17, 2006).

16 Furthermore, if a stay is not granted, the defenses available may be limited. If the court in  
17 the state court criminal action considers Plaintiff's factual allegations regarding the June 14, 2019  
18 incident, such findings may be binding in this Court. Until resolution of the criminal  
19 proceedings, it is unclear whether certain defenses are available, such as a *Heck* bar or issue  
20 preclusion. *See Wallace*, 549 U.S. at 393–94 (noting that the question of whether a section 1983  
21 action is barred by *Heck* is more difficult to answer where the plaintiff is facing charges of  
22 resisting arrest or similar conduct arising from the same incident, and staying the action until the  
23 underlying criminal proceedings are concluded may be appropriate) (citation omitted); *see also*  
24 *Vivas v. Cty. of Riverside*, No. EDCV 15-1912-VAP (DTBx), 2016 WL 9001020, at \*3 (C.D.  
25 Cal. Jan. 12, 2016) (staying excessive force case where criminal prosecution for resisting arrest  
26 was pending).

27 Judicial efficiency also favors imposition of a stay because Plaintiff's criminal action  
28 involves many of the same facts. Accordingly, the Court will stay this action until Plaintiff's

1 criminal charges have been resolved.

2 **The Motion to Modify the Discovery and Scheduling Order & Request for**  
 3 **Leave *Nunc Pro Tunc* to File Exhaustion Motion Once Stay is Lifted**

4 Defendants request they be granted leave to file an exhaustion motion – a deadline  
 5 originally set for December 21, 2023 – *nunc pro tunc* once a stay of these proceedings is lifted.  
 6 (Doc. 32 at 5-6.) Present defense counsel<sup>2</sup> Sloan was assigned to this matter on the same date as  
 7 the deadline for the filing of an exhaustion motion. (*Id.* at 8, ¶ 2; *see also* Doc. 31 [Notice of  
 8 Change in Designation of Counsel filed 12/21/23].) Counsel declares that she began assessing the  
 9 case shortly thereafter and concluded Plaintiff has failed to exhaust his claims against Defendant  
 10 Pasillas, as well as his claim that Defendants retaliated against him by submitting a false rules  
 11 violation report arising from the June 14, 2019 incident. (*Id.* at 8, ¶¶ 6-7.) Defendants contend  
 12 granting their request will “streamline the case and elimination issues for trial, saving the Court  
 13 and all parties time and expense.” (*Id.* at 6.) Defendants assert Plaintiff will not be prejudiced by  
 14 their request as it is made just weeks after the December 21, 2023 deadline. (*Id.*)

15 Pursuant to Rule 16(b), a scheduling order “may be modified only for good cause and  
 16 with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily  
 17 considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations,*  
 18 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order “if it cannot  
 19 reasonably be met despite the diligence of the party seeking the extension.” *Id.* If the party was  
 20 not diligent, the inquiry should end. *Id.*

21 Here, the deadline for the filing of an exhaustion motion expired the same day Deputy  
 22 Attorney General Sloan was assigned to this case. Further, defense counsel’s assessment of the  
 23 record in this action and conclusion purporting to find Plaintiff has failed to exhaust his  
 24 administrative remedies as to some of the claims asserted was timely performed. Thus, defense  
 25 counsel acted diligently, and the relevant deadline cannot otherwise be met despite that diligence.  
 26 *Johnson*, 975 F.2d at 609; *see, e.g., Huckabee v. Medical Staff at CSATF*, No. 1:09-cv-00749-  
 27 DAD-BAM (PC), 2017 WL 6855473, at \*1-2 (E.D. Cal. Nov. 16, 2017) (granting defendants’

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<sup>2</sup> Deputy Attorney General Michael J. Yun was previously assigned in this matter.

1 motion to modify the discovery and scheduling order *nunc pro tunc*). Further, the Court agrees  
2 that permitting Defendants leave to file an exhaustion motion promotes judicial efficiency and  
3 will not unduly prejudice Plaintiff.<sup>3</sup>

4 The Court notes Defendants are obligated to respond to Plaintiff's request for production  
5 of documents by February 2, 2024. (*See* Doc. 32 at 6 & 8, ¶ 8.) Defendants request their  
6 "deadline to respond to Plaintiff's discovery until resolution of the related criminal case ... be  
7 extended to 45-days after the lift of the stay." (*Id.* at 6.) In this instance, the Court will vacate the  
8 Discovery and Scheduling Order issued August 21, 2023 and will reissue the discovery order  
9 once the stay of the action pending the outcome of the criminal proceedings is lifted. The Court  
10 will assign a new deadline for Defendants' response to Plaintiff's outstanding discovery request at  
11 that time.

### 12 III. CONCLUSION AND ORDER

13 For the reasons given above, **IT IS HEREBY ORDERED** that:

- 14 1. Defendants' motion to stay this action (Doc. 32) is **GRANTED**;
- 15 2. The action is **STAYED** pending resolution of Plaintiff's criminal case;
- 16 3. Defendants **SHALL** file a status report on **February 15, 2024**, addressing the status  
17 of the criminal proceedings, and every sixty (60) days thereafter, until those  
18 proceedings are resolved; and
- 19 4. The Discovery and Scheduling Order issued August 21, 2023 (Doc. 28) is  
20 **VACATED**. The Court will reissue a discovery and scheduling order once the stay of  
21 this action has been lifted following resolution of the criminal proceedings now  
22 pending in the Kings County Superior Court.

23 IT IS SO ORDERED.

24 Dated: January 10, 2024

25   
UNITED STATES MAGISTRATE JUDGE

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27  
28 <sup>3</sup> 18 days elapsed between the original deadline and the instant motion.